



The Comptroller General
of the United States

Washington, D.C. 20548

Jordan
(CORRECTED COPY)

Decision

Matter of: Independent Metal Strap Co., Inc.

File: B-231756

Date: September 21, 1988

DIGEST

1. After bids have been opened and exposed, defective specifications for certain line items of metal strapping do not provide a compelling reason justifying cancellation of invitation for bids (IFB), where award under IFB will meet the government's needs without prejudice to other bidders.
2. Speculative allegations that awardee made a mistake in its bid and that it will not be required to meet more stringent tolerance requirements are insufficient to form the basis of a protest.

DECISION

Independent Metal Strap Co., Inc. (IMSC), protests award of certain line items to any contractor but IMSC under invitation for bids (IFB) 2FYS-AX-88-0004-S issued by the General Services Administration (GSA). IMSC contends that the solicitation should be canceled and resolicited as to two line items of metal strapping.

We deny the protest in part and dismiss it in part.

The IFB was for a 1-year Federal Supply Schedule contract for steel strapping, seals, and plastic strapping. Each of 25 line items called for 6 geographical zones and various quantity ranges with award to be made on an item-by-item basis, that is, any combination of line item/zone/quantity. Two steel strapping line items (Nos. 9 and 15), representing 48 separately priced sub-items, are the subject of this protest.

According to the IFB, items were required to meet certain federal specifications and with the exception of items 9 and 15, the listing of the width tolerance specification was identical to the federal specification of plus or minus .005 inch. In the bid schedule, both items 9 and 15 listed stricter width tolerances: plus or minus .002 inch and .003 inch respectively. In accordance with the IFB's order of precedence clause, the stricter solicitation specifications were to be given precedence over the federal specification. See Federal Acquisition Regulation (FAR) § 52.214-29 (FAC 84-35).

Acme Steel Company was low bidder on 35 of the 48 sub-items within line items 9 and 15 for a total estimated value of \$2,121,234. IMSC was low bidder on 10 sub-items, and winner of broken ties for 3 of the sub-items, for a total estimated value of \$440,740. After comparing Acme's prices with its own, IMSC concluded that Acme's low bid prices were attributable to Acme's use of the more lenient federal specification as a basis for bidding.

When IMSC informed GSA of the inconsistency between the federal specification and the bid schedule specifications for items 9 and 15, GSA investigated and determined that the solicitation's stricter tolerance specifications were included erroneously. The contracting officer initially concluded that those tolerances could not be met by industry and notified the bidders that items 9 and 15 would be canceled and resolicited. However, after Acme objected on the grounds that its bid prices had been exposed, the agency reevaluated its position. GSA decided to proceed with an award on the basis that use of the stricter specifications would meet its needs and that no bidders would be prejudiced by an award, while, on the other hand, Acme would be prejudiced by resolicitation. When IMSC learned that GSA intended to make award on the basis of the original bids, it filed a protest with our Office.

As a preliminary matter, GSA argues that IMSC's protest should be dismissed as untimely because it concerns a discrepancy in the tolerance specifications, apparent on the face of the solicitation, which was not protested prior to bid opening. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988). We disagree. While related to the specification discrepancy, the IMSC protest concerns the propriety of GSA's decision not to cancel and resolicit the affected line items. IMSC learned of GSA's intention not to cancel on June 6, 1988, and thus was timely when it filed its protest on June 20. Accordingly we decline to dismiss the protest on this ground.

With regard to the merits, we note that a contracting officer has broad discretion in determining whether an IFB should be canceled. However, he must have a compelling reason for cancellation after bids prices have been exposed. See FAR § 14.404-1(a)(1) (FAC 84-5); Pacific Coast Utilities Service, Inc., B-220394, Feb. 11, 1986, 86-1 CPD ¶ 150. The fact that an IFB is defective in some way does not justify cancellation after bid opening if award under the IFB would meet the government's actual needs and there is no showing of prejudice to other bidders. Pacific Coast Utilities Service, Inc., B-220394, supra.

IMSC contends that GSA should cancel and resolicit line items 9 and 15 because GSA "really wants" the more lenient tolerance specification and IMSC would suffer prejudice if award is made as planned. Specifically, IMSC alleges that it significantly increased its bid prices to cover the cost of complying with the stricter specifications.

While the IFB was defective in listing stricter width tolerance specifications, and thus overstated GSA's minimum needs, there is no legally compelling reason to cancel the solicitation and resolicit. See Dunlin Corporation, B-207964, Jan. 4, 1983, 83-1 CPD ¶ 7. GSA has determined that those specifications will meet the government's actual needs since their only effect is to ensure that the products delivered will conform more closely to the required width dimensions. Further, there has been no showing of competitive prejudice. Both IMSC and Acme have agreed to furnish items meeting the stricter specifications and other bidders, who might have been affected, maintain that the specifications did not influence their decisions not to bid on items 9 and 15. Moreover, as noted by GSA, and contrary to IMSC's contentions, IMSC's prices for the current IFB are not significantly or consistently higher than its prices for the previous procurement which called for items meeting the more lenient federal specification. In fact, here IMSC maintained the same price or lowered it for 25 of the 48 sub-line items concerned. See Dunlin Corporation, B-207964, supra. Under the circumstances, cancellation and resolicitation would be prejudicial to Acme due to the exposure of its low bid prices.

In view of GSA's requirement that both parties must meet the stricter specifications, IMSC's allegations--that Acme not only based its bid on the more lenient specification^{1/}, but that Acme will not be required to perform in accordance with the contract--amount to mere speculation, which is insufficient alone to provide the basis for sustaining a protest. American Identification Products, Inc., B-227599, July 13, 1987, 87-2 ¶ 42. In any event, whether Acme will be required to meet these specifications is a matter of contract administration which we will not review. 4 C.F.R. § 21.3(m)(1) and we will not attribute improper motives to a contracting officer based on inference or supposition. Business Communications Systems, Inc., B-218619, July 29, 1985, 85-2 CPD ¶ 103.

Accordingly, the protest is denied in part and dismissed in part.



James F. Hinchman
General Counsel

^{1/} To the extent IMSC is alleging a mistake by Acme, it is not an interested party to raise such an issue. Kellog Plant Services, Inc., B-227689.3, Nov. 24, 1987, 87-2 CPD ¶ 510. To the extent IMSC is alleging Acme is not responsible because it cannot meet the stricter specifications, we will not review an affirmative determination of responsibility where, as here, there is no showing of possible fraud or bad faith or that definitive responsibility criteria were not applied. See Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5).